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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,215	08/22/2006	Philippe Dumoux	DUMOUX 5	6029
1444 7590 02/06/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER PELHAM, JOSEPH MOORE				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,215

Applicant(s)

DUMOUX, PHILIPPE

Examiner

Joseph M. Pelham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-12 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 15-17, 19 and 21-27 is/are rejected.
- 7) ☒ Claim(s) 18 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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The examiner acknowledges the Response filed 12/24/08. Claims 1-5, 7-12, and 15-27 remain pending.

The telephone interview with Mr. Finkelstein on 2/2/09 is also acknowledged, as is the examiner's agreement to withdraw the finality of the previous Office action by reason of the disputable justification for its finality.

While the Response will be addressed in its entirety, the instant Office action will be made final because the amendment to the claims did not address all of the issues cited in the previous 35 USC 112 rejection of claim 21, and left the claim subject to a prior art rejection which is repeated below.

Information Disclosure Statement

The information disclosure statement filed 8/22/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Applicant states that copies of GB 20184 A and GB 02455 A were submitted with the amendment filed 8/25/08. The copies were not received. Applicant may send the subject patents to the examiner by facsimile, and they will be considered.

Claim Rejections - 35 USC § 103

Claims 1, 7-10, 15-17, 19, and 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. 6443053 in view of US Pat. 5584235.

Referring to Figs. 1-6 and col. 5, lines 25-63 at least, US'053 discloses a tubular side wall 1 and perforated openwork, stainless steel (col. 5, lines 39-43) plate 2 with "parts presenting a retaining strip" 22 cooperate with a "lower abutment of the... side wall," are "installed in a peripheral depression of the... plate," and the plate having "an elliptical geometry." Metal plate 2 has "depressions" 21 each with a "perforation" and although such is conventionally made by "deformation," as recited in claim 1, the process by which the product – the "plate" – is made is not germane to patentability unless it results in a structural difference, which is not the presently the case.

The claims differ from US'053 only in calling for elongate depressions in a circumferential direction, with perforations in the depressions, such that every radial section intersects at least one such depression, and a "peripheral deformation extending between the... two parts."

Referring to Fig. 1 and col. 2, lines 38-53, US'235 discloses a bottom portion of a steamer with elongate depressions 40 in a circumferential direction (since Fig. 1 is in cross-section), with perforations 44 in the depressions, such that every radial section intersects at least one such depression. It would have been obvious to adapt the depressions of US'235 to the plate of US'053, since US'235 teaches such to enhance

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drainage of condensate from the steaming chamber (col. 3, lines 10-17). The outermost depression of US'235 is a "peripheral deformation extending between the... two parts."

Claims 2-5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'053 in view of US'235, as applied to claims 1, 7-10, 17, 19, 22, and 24-27 above, and further in view of US Pat. 5974953.

The claims differ from US'053 in view of US'235 only in calling for a side wall of plastic or glass. The Examiner notes, however, that US'053 does disclose the use of polycarbonate for the side wall portion, but not explicitly in combination with a metal plate. However, US'953 discloses, at col. 2, lines 30-32 & 48-50, an analogous steamer with a plastic side wall 1 and metal plate 2. It would have been obvious to use the metal plate as suggested by US'953 since it is both durable and easily cleaned, and the plastic side wall allows convenient monitoring of the cooking process.

Claims 11, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US'053 in view of US'235, as applied to claims 1, 7-10, 17, 19, 22, and 24-27 above, and further in view of US Pat. 5069198.

The claims differ substantively from US'053 only in calling for up to three alternating circumferential arrays of elongate "depressions," such that all lines passing through the plate middle pass through a "depression," and an elongate perforation in the bottom of each depression. However, referring to Figs. 1-4c and col. 3, lines 29-49, at least, US'198 discloses alternating series of "depressions" (15 or 22), such that all lines passing through the plate middle pass through a "depression," and an elongate perforation 18 (slot) in the bottom of each depression. It would have been obvious to form the depressions and perforations after the manner of US'198, since US'198 teaches such to enhance the uniformity of flowing steam in the cooking chamber.

Allowable Subject Matter

Claims 18 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are not persuasive.

Applicant argues, at pages 4-5 of the Response, that because the bottom of the US'235 steamer (applied as grounds of rejection) is made of plastic, there is no reason to suppose that a plastic bottom would be rigid enough to function in the steamer of US'053, nor would one be motivated to make the bottom of US'235 of a metallic material.

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The test for obviousness, however, is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The rejection relied on US'235 merely for its teaching of elongate depressions in a circumferential direction, with perforations in the depressions, such that every radial section intersects at least one such depression, and a "peripheral deformation extending between the... two parts" (i.e., the outermost depression). The rejection did not contemplate use of the material of US'235, since the metal bottom of US'053 is clearly adequate for its purpose. Moreover, the rejection made no mention of forming the bottom of US'235 of metal.

Applicant argues further, at pages 5-6, that because claims 1 and 25 recite that "each of said perforations is formed in the bottom or a respective depression," there can be one and only one perforation in each depression. The examiner urges applicant to note that this limitation does not limit the number of perforations in each deformation: if each deformation had a plurality of perforations, as does US'235, it is certainly still the case that "each of said perforations is formed in the bottom or a respective depression."

Applicant argues, at page 6 and elsewhere, that because US'235 is not concerned with improved rigidity of the steamer bottom, its deformations would not be considered for the bottom of US'053. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art, however, cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). The teaching of US'235, of the draining advantage of the deformations, is sufficient to apply the teachings to the bottom of US'053.

Applicant argues, also at page 6, that US'235 does not explicitly disclose the deformations of its steamer bottom to be elongate depressions in a circumferential direction. As noted above in the rejection, however, because the figure depicts the bottom in cross-section it is representative of a *typical* cross-section, which is described in the specification to be "wavy," the "troughs" may be assumed, *prima facie*, to extend in a circumferential direction. Applicant's assertion that this might not be the case is not sufficient to over come a *prima facie* case of obviousness.

Applicant argues, at page 7, that the elongate perforations recited in claim 16 are not disclosed by US'053 to be in the troughs, which argues against the references individually. One cannot show nonobviousness by attacking references individually, however, where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). US'053 teaches the advantage of both elongate and

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circular perforations; US'235 teaches the advantage of all perforations being placed in the troughs, rendering the limitation obvious.

Applicant argues, also at page 7, that the references do not disclose a bottom having an elliptical shape. Yet US'053 discloses a oval shaped bottom, and an elliptical shape is clearly not a critical limitation, but a mere design choice, which cannot be regarded to patentably distinguish the claimed invention from the prior art.

Applicant argues, again at pages 7-8, that the US'198 patent does not disclose either two (claim 11) or three (claim 12) series of elongate depressions arranged in an alternating manner, nor does US'198 disclose depressions with perforations in their bottoms. As noted above, however, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. The US'198 patent is cited only for its teaching (Fig. 4b at least) of an alternating arrangement of perforations in the bottom of a steamer.

Furthermore, since the recited "two" or "three" "series" of depressions can be any subset of the depressions of US'053 in view of US'235, comprising a plurality of depressions, and both US'053 and US'235 disclose uniformly distributed perforations, they also disclose diverse subsets constituting "two" or "three" "series" of depressions "arranged in an alternating manner," exactly as claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph M Pelham/
Primary Examiner, Art Unit 3742
2/4/09